THE HON'BLE SRI BILAL NAZKI, THE ACTING CHIEF JUSTICE

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.18138 OF 2007

Dated 19th November, 2007

Between:

V.V.Subba Rao and others … Petitioners

And

The Commissioner and two others … Respondents

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O R D E R (Per Hon'ble Sri Bilal Nazki, the Acting Chief Justice):

The writ petitioners in this case complain that the respondents had taken up the project of road widening at Bandaru-Gudiwada and Pedana-Bantumilli roads and they started marking houses of the petitioners who raised objection, but the respondents did not consider the same and were going ahead with the demolition of houses and shops. Earlier, some of the residents approached this Court and this Court passed stay of demolition on condition that if the respondents were to widen the road by demolishing the houses, they should follow the process of law. Thereafter, the first respondent convened a meeting calling upon all the residents of the municipality, who were having houses and shops on the main road, to give suggestions to control the problem of traffic. Number of residents participated the meeting and the road widening project was also discussed. The residents also stated that they were ready to cooperate with the development of Pedana municipality. On 21-08-2007, the respondents made marking of buildings for the purpose of widening the road by 57.6 feet and 46 feet respectively without notice and without initiating land acquisition proceedings. Hence, this writ petition.

In response, in the counter affidavit filed by the first respondent, it is stated that the petitioners have voluntarily agreed to part with the land without compensation. It is stated in the counter-affidavit that except petitioner Nos.2, 7 and 14, all other petitioners have given consent letters for surrendering their land to the Government for road widening without compensation.

Last time we saw the copies of these consent letters/agreements and directed originals of these agreements be placed before this Court. These agreements were said to have been attested by a Notary Public by name Mr. N.Maheswara Rao, who was also directed to remain present. These agreements were written on a *pro-forma*, which is perhaps prepared by the respondents themselves. The blanks on these agreements had also not been filled up even at the time of attestation and execution of these agreements. The blanks, which have not been filled up, relate to the description of the property, the time for which the executant has enjoyed the property and the measurement of the property, which the executant would lose. Since all these blanks have left open, therefore, even these agreements were executable nothing could be executed. In these agreements, how much land the executants of these agreements agreed to surrender, without compensation, is also not shown. Whether the executants had a house of one floor, two floors or three floors is also not shown and what is the total area owned by the executants is also not shown. What makes these agreements more curious is that after having agreed allegedly to surrender the land and houses without compensation, these executants further agreed to remove the structures at their own cost and also agreed that they would not claim any compensation from the Government and handover the place after removing the debris to the Government. They further took the responsibility of any litigation in future that may be initiated by their heirs or any other third parties connected with the said property. They further undertook that if any person initiates any legal proceedings against the Government, the executant and their heirs would be responsible for that and the Government or District Collector or the Municipality would have no responsibility whatsoever.

No sensible person would ever scribe such an undertaking or an agreement. One can understand some person giving his property for road widening for free of cost not claiming any compensation, but

nobody would take upon himself the responsibilities which in these agreements the executants are alleged to have taken particularly, when all these people do not appear to be rich persons.

Learned Standing Counsel appearing for the Municipality-the first respondent has submitted that so far these agreements have not been executed and property has not been taken and they do not want to insist on these agreements. If the petitioners voluntarily surrender the land, they will take it, otherwise they will resort only to land acquisition proceedings under the Land Acquisition Act, 1894.

In view of the submission of learned Standing Counsel for the Municipality that they will not resort to the agreements, which appear to be sham, to which we have made reference hereinabove, we allow this writ petition and direct that the property of the petitioners shall not be taken in pursuance of these agreements. However, the State shall be free to acquire the land in terms of the Land Acquisition Act, 1894.

Coming to the question of dealing with the Notary Public Mr. N.Maheswara Rao, we feel that this matter needs to be enquired into by the Government. In terms of Section 10(d) of the Notaries Act, 1952, the Government has power to remove the name of a Notary from the Register of Notaries in case of misconduct. *Prima facie*, we feel that the execution of such agreements could have not been certified as provided under Section 8 of the Notaries Act, 1952. Therefore, let the competent authority in the Government initiate proceedings against Mr. N.Maheswara Rao, Notary Public, Machilipatnam. The competent authority may collect the original agreements from the Collector while holding the enquiry and after holding the enquiry and hearing Mr. N.Maheswara Rao, the competent authority may pass appropriate orders.

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Bilal Nazki, ACJ

Dated 19th November, 2007

Ramesh Ranganathan,J

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